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IRAN'S CLAIM TO THE SOVEREIGNTY OF BAHRAYN

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I. Introduction

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The Oil Nationalization Act passed unanimously by both houses of the Iranian Parliament in March, 1951, raised once more the long-standing issue of Iran's claim to sovereignty over Bahrayn. The Iranian extremists, from both the left-wing *Tudeh* Party and the right-wing *Fida'iyan Islam* group, at first criticized Parliament for its silence about the oil of Bahrayn but, when the law for the expropriation of the Anglo-Iranian Company was enacted in April, they demanded that these laws should in like manner be applied to the Bahrayn Petroleum Company, jointly owned by the Standard Oil Company of California and the Texas Company, on the grounds that the Bahrayn Islands form a part of Iranian territory.

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The question of Iran's claim to jurisdiction over the oil of Bahrayn was first raised when the Shaykh of Bahrayn granted a concession to a British company in 1930. The Iranian Government sent a note of protest to the British Government on July 23, 1930, denying the right of the Shaykh of Bahrayn to grant a concession for exploiting the oil resources of these islands without Iran's approval, on the grounds that "the Bahrayn Islands form an integral part of Persia [Iran], and that Persia possesses incontestable rights of sovereignty over those islands. . . ."[1] This protest was followed by another to the United States Government on May 22, 1934,[2] when an oil concession was granted by the Shaykh to the Standard Oil Company of California. The note stated:

> According to information recently received by the Imperial Government [of Iran], a concession to exploit Bahrein oil has just been obtained by the Standard Oil Company of California, which has begun operations and has already extracted large quantities of oil.
>
> I have the honour to draw your serious attention to the above and to inform you that the concession in question or any other concession acquired by the Standard Oil Company or any other company whatsoever—having been obtained, not from the Persian Government, whose rights of sovereignty over the Bahrein Islands are incontestable, but from legally incompetent authorities who have no right to grant such concessions—is regarded as null and void. My Government strongly

[1] For text of the note, see League of Nations Official Journal, September, 1930, p. 1083.
[2] *Ibid.*, August, 1934, p. 969.

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protests against this concession and considers itself at liberty to claim and demand the restitution of any profit that may accrue from such concessions, as well as compensation for any damage that may result therefrom. . . .[3]

In view of the fact that Iran's claim to sovereignty over Bahrayn had been reiterated in the past on several occasions, it is likely that such a claim might be put forth again under favorable circumstances. After the second World War the issue was revived by Prime Minister Qawam as-Sultanah in 1946. He announced that all oil produced in Bahrayn and shipped to the Iranian mainland would be taxed at the same rate as that produced by the Anglo-Iranian Oil Company. If Iran's claim to the sovereignty of Bahrayn is valid, the Oil Nationalization Act, unless it specifically excludes Bahrayn or unless the Act by its terms applies only to the Anglo-Iranian Oil Company, must *ipso jure* apply to the Bahrayn Petroleum Company. While such claims have often been disregarded, they might assume a certain seriousness should the *Tudeh* Party seize power and, supported or inspired by Russia, seek excuses for intervention in the Persian Gulf by raising the question of Iran's claim to sovereignty over Bahrayn.

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Before turning to a discussion of the validity of Iran's claim, a word on the geography of the Bahrayn Islands might be useful. The term "Bahrayn" (which means the "two seas") was originally applied to the continental coast of Arabia (al-Hasa), the peninsula of Qatar, and the group of islands which separate the bay between Hasa and Qatar into the "two seas." But this term came to be applied only to those islands which form the "two seas." The Bahrayn Islands are an archipelago of coral formation (except perhaps the rocky hills in the center of the largest island) which includes Bahrayn, the largest (it is 27 miles long by 10 wide), Muharraq (second in size, five miles in length, and situated to the north of Bahrayn), Sitrah, Umm Na'san and a number of smaller islands. This archipelago was famous for its pearl fisheries from antiquity and more recently for the oil resources which have been discovered since the first World War. Its strategic value may assume an increasing importance should Communism penetrate southward towards Iran, Iraq, and the Persian Gulf.[4]

[3] The British Government had already objected to the grant of oil concessions to other Powers, but the United States State Department, pressing for equal opportunities for American interests, secured British agreement to the participation of American interests in the oil of Bahrayn. For an exchange of notes on this matter see Papers Relating to the Foreign Relations of the United States, 1929, Vol. III (Washington: Government Printing Office, 1944), pp. 80–82.

[4] For the geography of the Bahrayn Islands, see J. Theodore Bent, "The Bahrayn Islands in the Persian Gulf," Proceedings of the Royal Geographical Society, Vol. XII (January, 1890), pp. 1–19; Captain A. W. Stiffe, "Ancient Trading Centers of the Persian Gulf, VII: Bahrein," The Geographical Journal, Vol. XVIII (September, 1901), pp. 291–294; Maynard Owen Williams, "Bahrein: Port of Pearls and Petroleum," The

[FOR The rest of the footnote see p. 633]

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II. The Controversy between Iran and Great Britain over Bahrayn

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For over a century, from the time when Great Britain entered into treaty relations with the Shaykh of Bahrayn, Iran let pass no opportunity to make representations against the establishment of direct relations with the Shaykh by any foreign Power or to assert its own sovereignty over these islands. Probably the most important recent protest which Iran made was the one which it sent to the League of Nations, under Article 10 of the League Covenant, on the occasion of the signing of a treaty between King Ibn Saud and Great Britain on May 20, 1927.[5] Article 6 of this treaty[6] stated:

> His Majesty the King of the Hejaz and Nejd and its Dependencies undertakes to maintain friendly and peaceful relations with the territories of Kuwait and Bahrain, and with the Sheikhs of Qatar and the Oman Coast, who are in special treaty relations with His Britannic Majesty's Government.

This treaty caused a sharp note of protest to be sent by the Iranian Government to Great Britain on November 22, 1927,[7] in which it was stated:

> The Persian Government . . . protests emphatically against the part of the Treaty referred to, and looks to the British Government to take steps without delay to nullify its effects.

A copy of this note was communicated to the Secretary General of the League of Nations on November 23 with a covering letter[8] stating:

> This protest is communicated to you for the information of the States Members of the League of Nations, all of which are bound by the Covenant and, in particular, by Article 10, which guarantees the territorial integrity of each of them.

To this note Sir Austen Chamberlain, the British Foreign Secretary, replied on January 18, 1928, denying that "any valid grounds" exist upon which Iran could claim sovereignty over Bahrayn.[9] This reply elicited another note from the Iranian Government, dated August 2, 1928, in which the Iranian viewpoint was emphatically reiterated; but to this Sir Austen

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National Geographic Magazine, Vol. LXXXIX (February, 1946), pp. 195–210; Abbas Faroughy, The Bahrein Islands (New York, 1951); J. Oestrup, "Al-Bahrain," Encyclopedia of Islam, Vol. I, pp. 584–585.

[5] This treaty, known as the Treaty of Jidda, was based on an earlier similar treaty signed by Ibn Saud and Britain on Dec. 26, 1915, but the earlier treaty did not elicit a protest from Iran.

[6] British Parliamentary Paper (1927), Cmd. 2951. See also A. J. Toynbee, Survey of International Affairs, 1928 (London, 1929), Appendix I, pp. 439–440.

[7] League of Nations Official Journal, May, 1928, p. 605.

[8] *Ibid.*

[9] A copy of this letter was sent to the Secretary General of the League of Nations on Feb. 25, 1928, for communication to Member States of the League of Nations for information.

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replied in a detailed note of February 18, 1929, in which the juridical and historical arguments of the Iranian Government were challenged. This controversy occurred at a time when the British and Iranian Governments were already in conflict over a number of other problems, such as the dispute over Shatt al-Arab with Iraq,[10] Iran's relations with the Shaykh of Muhammarah, and Iran's desire to secure the abrogation of the Capitulations.[11] Some of these problems were later settled by negotiations; but for the conflict over Bahrayn, which for a century had been the subject of controversial discussion, no conclusive settlement was expected.

The argument of the Iranian Government in its notes of November 22, 1927, and August 2, 1928,[12] was based in the main on Iran's historical connections with, and an alleged recognition by Britain of its possession of, the islands. Iran claimed that the islands had "uninterruptedly" formed part of its territory, except during the Portuguese occupation from 1507 to 1622, and that their Shaykhs, since the expulsion of the Portuguese, "have always recognized Persian sovereignty." This historical claim, to which Iran attached great importance in its controversy with the British Government, will be briefly analyzed in the next section.[13]

Apart from its historical claims, Iran declared that the British Government had recognized in the past its sovereignty over Bahrayn. This alleged recognition seems to have been implicit, as indicated in the Iranian note, rather than explicit. The note of August 2, 1928, cited two documents in support of this contention.

The first was an agreement signed on August 30, 1822, between Captain William Bruce, representing the British Government, and the Prince-Governor of Shiraz, representing Iran. Though this agreement was at once repudiated by both governments on the ground that the two negotiators had signed it without prior authorization, it was regarded by the Iranian Government as an evidence of its possession of Bahrayn. "The historical truth," stated the Iranian note of August 2, 1928, "which plainly emerges from this agreement is the assertion and confirmation by Captain Bruce of the fact that the Islands of Bahrein then formed part of the Persian province of Fars." Captain Bruce, added the Iranian note, was in "an excellent position to know the facts," as they were then known. While Captain Bruce might have been ill informed about the reality of Iran's connections with Bahrayn—a possibility which was entirely overlooked by the Iranian Government when it asserted, without giving any evidence, that Captain Bruce was in a position "to know the facts"—he seemed to have

[10] See Majid Khadduri, Independent Iraq (London, 1951), pp. 240–246.

[11] A. J. Toynbee, Survey of International Affairs, 1925 (London, 1927), Vol. I, pp. 539–543; *ibid.*, 1934 (London, 1935), p. 223.

[12] For texts of these two notes, see League of Nations Official Journal, May, 1928, p. 605; *ibid.*, September, 1928, pp. 1360–1363. [13] See section 3, below.

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had no authority to negotiate such an agreement, since it was promptly repudiated by the British Government.

The second document consisted of an exchange of correspondence between Lord Clarendon and Persia on the questions of piracy and slave trade in the Persian Gulf. In reply to Persia's assertion of its sovereignty over Bahrayn, Lord Clarendon stated on April 29, 1869, that:

> The British Government readily admit that the Government of the Shah has protested against the Persian right of sovereignty over Bahrein being ignored by the British authorities, and they have given due consideration to that protest.

Not only was this passage construed to constitute recognition, but also another, cited from the same letter (with regard to piracy in the Persian Gulf), in which Great Britain conceded certain Persian rights in policing the Gulf. Lord Clarendon stated:

> If the Persian Government are prepared to keep a sufficient force in the Gulf for these purposes, this country would be relieved of a troublesome and costly duty, but if the Shah is not prepared to undertake these duties, Her Majesty's Government cannot suppose His Majesty would wish that in those waters disorder and crimes should be encouraged by impunity.

If Persia had then been able to police the Gulf, the Iranian note concluded, then the British Government would have considered itself relieved from its "duty" and would have withdrawn, leaving Persia to carry out these duties. If the "duty" of policing the Persian Gulf had actually devolved upon Persia, in case Britain decided to withdraw from the Gulf, it does not follow, as the Iranian Government concluded, that the action would have constituted British recognition of Iran's sovereignty over Bahrayn. The Iranian Government failed to see that the right to police the Gulf (which was conceded by Britain) would not necessarily constitute recognition of its sovereignty over Bahrayn. Nevertheless, the Iranian Government contends that Britain had recognized Iran's sovereignty in the past and that there is no "justification of its refusal [now] to recognize Persian sovereignty over Bahrein."

It follows accordingly, from the Iranian standpoint, that the Shaykhs of Bahrayn have merely exceeded their power by entering "into direct relations with a foreign State without the express authorization of the central Government," and, therefore, their action lacks "juridical value in international law."

In his reply to this argument Sir Austen Chamberlain, Secretary of State for Foreign Affairs, sent two notes to the Iranian Government dated February 25, 1928, and February 18, 1929, in which not only the Iranian historical claim was questioned but the contention that the British Govern-

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ment had recognized its sovereignty over Bahrayn was also challenged.[14]

Iran's claim that the British Government had ever recognized its sovereignty over Bahrayn was emphatically denied by Sir Austen Chamberlain. For ever since the year 1820, when Great Britain entered into treaty relations with the Shaykh of Bahrayn, it had acted on the assumption that the Shaykh was an independent ruler. When Captain Bruce, accordingly, negotiated the agreement of 1822 with the Governor of Shiraz, the agreement was promptly repudiated and Captain Bruce was recalled. "The main reason recorded for his recall," stated Sir Austen, "and for the prompt disavowal of this tentative agreement is that 'it acknowledges the King of Persia's title to Bahrein, of which there is not the least proof.'" Further, this agreement was also repudiated by the Shah of Persia who "expressed his displeasure that the Prince of Shiraz should have entered into any arrangements with the British Government without his knowledge or instructions." Since the Bruce agreement was repudiated by both Britain and Persia, it could hardly be cited as evidence of recognition by either party.[15]

With regard to Lord Clarendon's note of April 29, 1869, to which the Iranian Government attached greater importance, Sir Austen stated that the Iranian Government was "under a complete misunderstanding" in its interpretation of this note as meaning that "any recognition" of the Persian claims to sovereignty in Bahrein "was at that time intended."

The full text of the Clarendon note, however, was never published, which makes it indeed difficult to discover what Lord Clarendon's precise position was. But even if we analyze the meaning of the quotation apart from its context, it would seem that the British Government merely stated that the Iranian protest was duly considered.[15a] Due consideration of the protest could hardly be regarded as an admission that the claim was legally valid. As Sir Austen Chamberlain rightly stated in his note of January 18, 1928:

> . . . the whole tenor of the note should have made it clear that Her Majesty's Government maintained their right to enter into direct treaty relations with the Sheikhs of Bahrein as independent rulers; and while, at the same time, it indicated that Her Majesty's Government would gladly transfer to Persia, if she were able and willing to perform them, certain duties in the Persian Gulf towards the performance of

[14] For the text of the Chamberlain notes, see League of Nations Official Journal, May, 1928, pp. 605–606; *ibid.*, May, 1929, pp. 790–793.

[15] The Bruce agreement, it seems, had been cited by the Iranian Government in a number of former exchanges of letters, such as those of 1906 and 1907, but the British Government had invariably stated that the Bruce agreement under no circumstances implied recognition, since it was promptly repudiated by both parties. See League of Nations Official Journal, May, 1928, p. 607.

[15a] This conclusion has been confirmed by an examination of the full text of the correspondence, which was made available to the writer by the British Foreign Office after this article went to press.

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which the treaty relations in question contributed, and offered, in view of the friendly feelings entertained by Her Majesty's Government to be informed beforehand, when practicable, of any measure of coercion which the conduct of the Sheikhs might have rendered necessary, it is evident that no recognition of the validity of the Persian protest, or of the Persian claim to suzerainty, was thereby intended or implied.[16]

Probably greater emphasis is laid in the Iranian note on the general principles of international law which are invoked in its various sections. The general rule is stated at the beginning of the note as follows:

> A territory belonging to a sovereign State cannot be lawfully detached so long as the right of ownership has not been transferred by this State to another State in virtue of an official act, in this case a treaty, or so long as its annexation by another State or its independence have not been officially recognized by the lawful owner of the territory.

Since the Iranian Government has never transferred or renounced its sovereignty over Bahrayn nor recognized its annexation by another state, it must therefore, according to the Iranian note, belong to Iran. International practice, however, could hardly support this rule, and its validity would actually permit any state to advance a claim to territory on the ground that its loss in the past had not been confirmed by an express approval of the owner. The effective establishment of the independence of a territory seems to supersede any previous connections. If the recognition of such independence was given by the Powers, even if the owner was not among them, the territory would be regarded as an independent sovereign state.

An Iranian writer, Mr. Malek Esmaili, in defending the claim of his country to sovereignty over Bahrayn,[17] cited the *Clipperton Island* case,[18] submitted by France and Mexico to the arbitration of the King of Italy in 1909, to prove his case. The following quotation from the arbitral award is given as pertinent:

> There is no reason to suppose that France has subsequently lost her right by *derelictio*, since she never had the *animus* of abandoning the island, and the fact that she has not exercised her authority there in a positive manner does not imply the forfeiture of an acquisition already definitively perfected.

Mr. Esmaili's case is weakened by the fact that Clipperton Island was an uninhabited territory. Further, Mexico failed to prove any actual exercise of sovereignty over it after it was discovered by France in 1858. Thus it was decided that the island must belong to France, since in the uninhab-

[16] *Ibid.*, p. 606.

[17] M. Malek Esmaili, *Le golfe persique et les îles de Bahrein* (Paris, 1936), pp. 200–204.

[18] See translation of the arbitral award in this JOURNAL, Vol. 26 (1932), pp. 390–394.

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ited character of the island "occupation" need not necessarily be more than the mere announcement of an intention to take possession and the continuous assertion of title.

In an inhabited territory such as the Bahrayn Islands the mere assertion of title by Iran could hardly be regarded as sufficient, if she failed to establish in the territory an organization capable of making its laws respected. For this reason, accordingly, the Bahrayn case would be analogous to the *Palmas*, rather than the *Clipperton*, case, in which the principle of "continuous and peaceful display of the functions of State" was deemed necessary to determine the title to a territory. "Territorial sovereignty," stated the Permanent Court of Arbitration in the *Palmas* award,[19] "involves the exclusive right to display the activities of a State" and that "without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfill this duty." The same principle was asserted in the *Eastern Greenland* case [20] in which the Permanent Court of International Justice endorsed, in 1933, the principle of "the peaceful and continuous display of State authority" which the Permanent Court of Arbitration applied in 1928 in the *Palmas Island* decision.

The Iranian claim, lacking any valid legal ground, seems to depend, in the last analysis, merely on Iran's historical connections with the islands which have often been reiterated in its notes to the British Government. How significant this historical claim may be and whether it could confer title to sovereignty calls for a brief consideration.

III. Iran's Historical Claim

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The early history of Bahrayn is obscure, but the islands have been inhabited from a very early time on account of the pearl fisheries. They witnessed a number of conquerors from the time of the Babylonians in antiquity to the proclamation of British protection in the nineteenth century.

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The Persians seem to have dominated the islands before the rise of Islam in the seventh century of the Christian era, but even before this time the Arabs had already migrated into the Persian Gulf coasts and settled in Bahrayn. The rise of Islam afforded a fresh opportunity for the Arabs to gain more permanent and complete control of the islands which lasted from the seventh to the opening of the sixteenth century.[21] From Arab rule the islands passed into the hands of the Portuguese at the opening of the six-

[19] Publication of the International Bureau of the Permanent Court of Arbitration (1928), reprinted in Scott, Hague Court Reports (second series), p. 84; also in this JOURNAL, Vol. 22 (1928), p. 867.

[20] Publications of the Permanent Court of International Justice, Series A/B, No. 53.

[21] Tabari, *Tarikh al-Rusul wa al-Muluk* (ed. M. J. de Goeje, Leiden, 1879–1901), Series I, Vols. 1, 2, 3, 4, pp. 213, 745–747, 1630, 1952–1953.

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teenth century.[22] The Portuguese rule, which lasted about a century, came to an end as a result of their waning power in the Persian Gulf, when Portugal was annexed by Spain, and diverted the Portuguese forces from the East to be used in Europe. These favoring circumstances permitted the Persians to revive their interests in the Persian Gulf.

But Persian intervention in the affairs of Bahrayn, we are told by Arab historians, was prompted by internal conflict between the two rival Islamic sects.[23] For long the tribal chiefs of the two main Sunni and Shi'i sects of Bahrayn—a sectarian quarrel which wrought havoc in the Islamic countries—sought outside help against each other. Just as the Ottoman Empire had become the center of Sunni power, so Persia was looked upon by the Shi'i world as the defender of Shi'i rights.[24] During the reign of Shah Abbas (1587–1629), a great protagonist of the Shi'i cause, power in Bahrayn was then in the hands of a Sunni chief. The Shi'is appealed to Persia, and the Shah, assisted by the British, who were then pursuing the Portuguese, expelled the remaining Portuguese forces from Bahrayn and Hormuz in 1622.

From 1622 the Bahrayn Islands remained predominantly under Persian domination until 1783; but even during this period Persian rule was not an uninterrupted one, for the islands became the target of attack by neighboring rulers. In 1717 and 1720 the Arab chiefs of Muscat twice attacked the islands and wrested them from Persia; and it was not until 1737 that the islands were restored to Persian rule under the able command of Nadir Shah. Persian rule, however, remained unstable, for Nadir Shah's immediate successors became involved in a contest of supremacy over the islands with the chiefs of the Utubi tribes, who were then ruling the coast of Arabia across the bay from Bahrayn. The Utubis came originally from Najd and settled in Kuwayt, but later, with the help of the chiefs of al-Sabah tribe, rulers of Kuwayt, moved to al-Hasa and established themselves at Zubara, a town situated in the peninsula of Qatar opposite to the Bahrayn Islands.

In 1783 Shaykh Ahmad al-Khalifa, then chief of the Utubi tribes and ruler of Zubara, attacked Bahrayn and annexed it to his territory; but when Zubara was overrun by the Wahhabi forces a few years later, the Khalifa chiefs moved their seat of government to Bahrayn, abandoning their Arabian dominion.

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While Bahrayn was freed from Persian rule, it never ceased to be the bone of contention among neighboring rulers, such as the Sultans of Muscat

[22] Oestrup gives the date 1507 as the beginning of Portuguese rule (The Encyclopedia of Islam, Vol. I, p. 585) which seems to be the source of the date given in the Iranian note of Aug. 2, 1928 (League of Nations Official Journal, September, 1928, p. 1. 1).

[23] Al-Nabhani, *Tarikh al-Bahrayn* (Cairo, 1924); Amin Rihani, *Muluk al-Arab* (Beirut, 1929, 2nd ed.), Vol. II, Chs. 5–6.

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[24] For a discussion of this schism in the Islamic society of the thirteenth century, see A. J. Toynbee, A Study of History (London, 1934), Vol. I, pp. 346–402.

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B 125 and the Wahhabi Amirs. It was partly owing to this threat of neighboring rulers, but mainly to internal feud among members of the Khalifa family (chiefs of the Utubi tribes) that Great Britain found ample reasons for intervention.

In 1820, when Great Britain had already made her appearance on the scene in the Persian Gulf, the chiefs of Bahrayn sought British support for security from outside attack as well as for internal stability. This coincided with Britain's interests in the security of her trade relations and in the suppression of piracy and the slave trade in the Persian Gulf. It was in pursuance of this objective that Britain signed the first of a series of treaties with the Shaykhs of Bahrayn without encroaching upon their independence; but these treaties resulted later in the gradual change of the islands from independent to dependent status.

The foregoing brief sketch shows that Bahrayn, during its long and checkered history, was able to maintain a large measure of internal independence even when it had fallen under foreign control. Apart from its uncertain status in antiquity, which is hardly necessary to determine for our purpose, the islands passed under Arab rule at the opening of the seventh century and remained, either as an integral part of the Arab Empire or as a semi-independent entity, until the sixteenth century. Arab rule, accordingly, may be said to have lasted for more than eight centuries. The B Portuguese rule roughly lasted for a century (*circa* 1507 to 1622), and the 177 Persian rule (1622–1783) for a little over one and a half century. From 167 a purely historical standpoint, the Persian period has left no special impact 197 on the inhabitants of the islands, whether racial or cultural, which would 175 distinguish it from other periods. Contrary to the Iranian contention (as stated in its note of August 2, 1928), the inhabitants of the islands have either originally migrated from Arabia or have been Arabicized under long Arab rule. They speak the Arabic language, though many of them speak Persian too, and their manners and customs are Arabian. Finally, they have been ruled since 1783 by their own Arab chiefs, even though they acknowledged British protection—a period which lasted longer than that [I of Persian rule. Iran's historical claim, based on a very limited past at- 648] tachment, seems to carry with it the air of propaganda; it could hardly challenge Arab historical claims.

IV. British Protection

From the time when Napoleon invaded Egypt in 1798 a period of Anglo-French rivalry for the domination of Eastern waters began, and the Persian Gulf was but one portion of the field in which the struggle was fought out. When Napoleon had been eliminated, the Eastern waters, including the Persian Gulf, became an undisputed field of British influence and commerce. Britain began to prepare the way by combatting piracy and the

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slave trade, and she signed treaties with Persian Gulf chiefs by virtue of which, within a few years, she virtually became the paramount Power in the Gulf area. In a speech given to Persian Gulf chiefs on November 21, 1903,[25] Lord Curzon, in a state visit to this area, summed up the objectives of British policy and achievements during the nineteenth century as follows:

> Sometimes I think that the record of the past is in danger of being forgotten, and there are persons who ask—Why should Great Britain continue to exercise these powers? The history of your States and of your families, and the present condition of the Gulf, are the answer. We were here before any other Power, in modern times, had shown its face in these waters. We found strife and we have created order. It was our commerce as well as your security that was threatened and called for protection. . . . We saved you from extinction at the hands of your neighbors. We opened these seas to the ships of all nations, and enabled their flags to fly in peace. We have not seized or held your territory. We have not destroyed your independence, but have preserved it. . . . The peace of these waters must still be maintained; your independence will continue to be upheld; and the influence of the British Government must remain supreme.

A General Treaty for the Pacification of the Persian Gulf, the first of a series which Britain negotiated with the Gulf chiefs, was signed on January 8, 1820.[26] The treaty provided that: "There shall be a cessation of plunder and piracy by land and sea on the part of the Arabs, who are parties to this contract, for ever" [Article 1]; and that:

> If any individual of the people of the Arabs contracting shall attack any that pass by land or sea of any nation whatsoever, in the way of plunder and piracy and not of acknowledged war, he shall be accounted an enemy of all mankind and shall be held to have forfeited both life and goods. An acknowledged war is that which is proclaimed, avowed, and ordered by government against government; and the killing of men and taking of goods without proclamation, avowal, and the order of a government, is plunder and piracy [Article 2].

Article 4 required the Arab chiefs "not to fight with each other" and to maintain peace with the British Government; Article 9 prohibited slave trade and prevented the Arabs from carrying slaves in their vessels.

While this general treaty was jointly signed by the Arab Gulf chiefs, bilateral agreements were signed for its implementation in each of the chiefs' territories. With regard to Bahrayn, its agreement (February 15, 1820) provided:

> That the Sheikhs shall not permit from henceforth, in Bahrein or its dependencies, the sale of any commodities which have been procured by means of plunder and piracy, nor allow their people to sell anything

[25] Cited by A. T. Wilson, The Persian Gulf (Oxford, 1928), p. 192.

[26] See text of the treaty in C. U. Aitchison, A Collection of Treaties, Engagements and Sanads (Delhi, 1933), Vol. XI, pp. 245–247.

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175 of any kind whatsoever to such persons as may be engaged in the practice of plunder and piracy; and if any of their people shall act contrary hereto, it shall be equivalent to an act of piracy on the part of such individuals [Article 1].[27]

Article 2 required the delivery of all Indian prisoners in Bahrayn and Article 3, the final article, states the adhesion of the Shaykh to the General Pacification Treaty.

It is to be noted that there is nothing in this agreement, nor in the General Pacification Treaty, which infringed on the powers or the independence of the Shaykh of Bahrayn. Britain readily recognized the Shaykh as an independent ruler. When, accordingly, the commander of the Egyptian forces had overrun the interior of Najd in the course of his wars with the Wahhabis, and announced his intention of taking Bahrayn as part of Najd, he was informed that the British Government could not admit any claim of Egypt to Bahrayn. The British Government, it will be recalled, declined to recognize similar claims advanced by Persia on various occasions during the nineteenth century. The Ottoman authorities made overtures to the Shaykh of Bahrayn with the object of obtaining his recognition of the supremacy of the Porte. "The ministers of the Sultan," said Aitchison, "were informed that, as the British Government had had treaty relations with Bahrain as an independent power, they could not acknowledge or acquiesce in any arrangement for placing the island under the sovereignty or protection of the Porte."[28]

Rivalry among the members of the Khalifa family during the latter half of the nineteenth century was, perhaps, the principal reason which prompted Great Britain to sign further treaties with the Shaykhs of Bahrayn, with the consequential British encroachment on their independence, lest the Shaykhs should permit other Powers to control the islands. Jealousy among the chiefs, which prompted Britain to expel the ruler of Bahrayn in 1859, invited both Turkey and Persia to exploit this rivalry to their advantage. The Shaykhs began to play one Power off against another, and one of them, Shaykh Muhammad Khalifa, claimed the protection of both Turkey and Persia. The Persian flag was hoisted on the arrival of an agent of Persia, only to be pulled down and replaced by the Turkish flag on the arrival of the Turkish agent.

Great Britain made representations to both Turkey and Persia, which resulted in the disappearance of their agents, and the Shaykh's activities regarding his relations with his neighbors, as well as his powers regarding making war, piracy and the slave trade were restricted by the signing of a treaty in which a promise of British protection from foreign aggression was given. This treaty (signed on May 31, 1861), while it stated that the

[27] *Ibid.*, p. 233.

[28] Aitchison, *op. cit.*, Vol. XI, p. 191.

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Shaykh was recognized as an "independent ruler," virtually reduced the islands to the status of a protectorate. The treaty[29] stated:

> I [the Shaykh] agree to abstain from all maritime aggressions of every description, from the prosecution of war, piracy, and slavery by sea, so long as I receive the support of the British Government in the maintenance of the security of my own possessions against similar aggressions directed against them by the chiefs and tribes of this Gulf [Article 2].

And it also provided that:

> In order that the above engagements may be fulfilled I [the Shaykh] agree to make known all aggressions and depredations which may be designed, or have place at sea, against myself, territories, or subjects, as early as possible to the British Resident in the Persian Gulf, as the arbitrator in such cases, promising that no act of aggression or retaliation shall be committed at sea by Bahrein or in the name of Bahrein, by myself or others under me, on other tribes, without his consent or that of the British Government, if it should be necessary to procure it. . . .

In 1867 Shaykh Muhammad was involved in a struggle with the Chief of Qatar, the peninsular coast of Arabia, and with one of the rival chiefs of his family, supported by the Persian Government. Britain, while it tried to restrain the Shaykh from his aggressive designs on Qatar, defended Bahrayn's independence against Persia.[30] Thereupon Shaykh Muhammad was deposed by Britain and his brother, Ali ibn Khalifa, signed an agreement in which he accepted to abstain from aggression and to appeal to the British Resident as arbitrator in any quarrel with his neighbors.[31]

During the latter part of the nineteenth century the Ottoman authorities in Arabia and Iraq made attempts to extend their influence to Bahrayn; but both Britain and the Shaykh of Bahrayn protested to the Ottoman Porte that Bahrayn was an independent country. In 1880 the ruler of Bahrayn, Shaykh Isa ibn Ali al-Khalifa, signed an agreement with Great Britain in which he agreed to abstain from entering into negotiations or making treaties with any foreign Power without her consent. The agreement, dated December 22, 1880,[32] consisting of a single article, stated:

> I, Isa Ibn Ali Al-Khalifeh, Chief of Bahrein, hereby bind myself and successors in the Government of Bahrein to the British Government to abstain from entering into negotiations or making treaties of any sort with any State or Government other than the British without the consent of the said British Government, and to refuse permission to any other Government than the British to establish diplomatic or consular

[29] *Ibid.*, pp. 234–236.

[30] Major General Sir Henry Rawlinson, England and Russia in the East (London, 1875), pp. 109–111; Aitchison, *op. cit.*, p. 192.

[31] Text in Aitchison, *op. cit.*, pp. 236–237. [32] *Ibid.*, p. 237.

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agencies or coaling depots in our territory, unless with the consent of the British Government. . . .

175 In 1892 this agreement was supplemented by another in which Shaykh Isa reluctantly accepted further limitations upon his powers. The text of the agreement of March 13, 1892,[33] is as follows:

> 1. That I [Shaykh Isa] will on no account enter into any agreement or correspondence with any Power other than the British Government.
> 2. That without the assent of the British Government, I will not consent to the residence within my territory of the agent of any other Government.
> 3. That I will on no account accede, sell, mortgage or otherwise give for occupation any part of my territory save to the British Government.

These two agreements seem to have placed the Bahrayn Islands under British protection by the Shaykh's acceptance of British advice in the conduct of foreign relations. When, in the following year, the Ottoman Porte claimed that the people of Bahrayn were regarded as Ottoman subjects within Ottoman territories and objected to British officials taking up the cases of Bahrayn subjects suffering from piracy, the British Government replied that Bahrayn was under "British protection."[34]

175 In 1900 a British Political Agency, subordinate to the Political Resident 640 in the Persian Gulf, was established in Bahrayn. In 1909 Shaykh Isa agreed not to allow the establishment in Bahrayn of post offices by any foreign government other than the British. In 1914 Shaykh Isa agreed that he would not himself, nor would he allow any foreign interest to, exploit the oil resources of Bahrayn without the approval of the British Government.[35]

The foregoing treaty relations, often referred to as constituting "protection," have indeed touched upon matters beyond those normally covered in treaties between the protecting and the protected states. The Shaykhs of Bahrayn have not only given up some of their powers regarding the conduct of foreign relations—an action which is normal in international practice—but they have also alienated certain attributes of their internal sovereignty which would cast serious doubt as to whether Bahrayn is a *bona fide* protectorate. The status of Bahrayn, which constitutes a peculiar juridical position, is difficult to define in terms of modern international law; but this peculiarity raises the very issue whether Bahrayn's status, the legacy of various legal transactions made at a time when the Eastern World was outside the pale of international law, should be defined merely in terms of modern juridical rules.

V. The Juridical Status of Bahrayn

640 Under the general principles of Muslim law the Bahrayn Islands, as Muslim territory, are regarded as part of the *Dar al-Islam* (dominion of

[33] *Ibid.*, p. 238.
[34] *Ibid.*, p. 196. [35] See text, *ibid.*, p. 239.

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Islam) and its ruler must owe allegiance to the Caliph, the supreme politico-religious head of the Muslims.[36] The Caliph, who derives his authority from the sacred law, is charged with the functions of maintaining the integrity of *Dar al-Islam* and the propagation and defense of the religion.[37] It follows, accordingly, that so long as there was a Caliph in evidence, all the Muslims owed allegiance to him and acknowledged his ultimate authority. The Bahrayn Islands, until the time of the abolition of the Caliphate, must be regarded as part of the Caliph's dominions. Even the Persian occupation might be regarded as a continuation of Islamic sovereignty, for the Persian Shah, whether he acknowledged the Caliph's overlordship or ruled as a rival Caliph, claimed to fulfill the same functions enjoined by the sacred law over both his country and Bahrayn.

Long before the opening of the nineteenth century, when Great Britain made her appearance in the Persian Gulf, the authority of the Caliph had declined and certain portions of his dominions had passed under foreign rule. The occupation of Muslim territories by non-Muslim Powers was never recognized by the Caliph and was regarded as an anomaly under Muslim law. It was tolerated only so long as Muslim power was not strong enough to restore those territories to the rule of the sacred law.[38]

The European Powers, on their part, when they came into contact with the Islamic world, were confronted with a civilization so different from their own that they found it more expedient to forget about their own system of international law in conducting their relations with Muslims and other Eastern people. It might have been possible to adjust the European system of international law to these lands by adopting certain rules and practices from Eastern laws. But in fact the distintegration of these Eastern societies had already gone too far to enable them to deal on a par with the European Powers.[39] In the circumstances, neither would Islam recognize Christian rule in its dominion, nor were the European Powers prepared at first to regard Eastern lands as falling under the pale of European international law. Thus the European jurists began to justify certain actions

[36] For a discussion on what constitutes an Islamic territory, see Abdur Rahim, The Principles of Muhammadan Jurisprudence (Madras, 1907), pp. 395–396; Majid Khadduri, The Law of War and Peace in Islam (London, 1941), pp. 19–20.

[37] See Sir Thomas Arnold, The Caliphate (Oxford, 1924), pp. 70–76; A. Sanhoury, *Le Califat* (Paris, 1926), pp. 3 ff.

[38] Even when the Ottoman Sultans ceded such territories as the Crimea (1774), Cyprus (1878), Egypt (1882), and Tripoli (1912), the "spiritual" authority of the Caliph was recognized by the Powers to continue over the Muslims who remained under foreign rule. See Arnold, *op. cit.*, pp. 163–183. This practice of the separation of the "spiritual" from the "secular" powers of the Caliph, which is not feasible in Muslim legal theory, was resorted to by the Ottoman Sultan in order to maintain sovereignty over lost Islamic territories. See C. A. Nallino, Notes on the Nature of the Caliphate in General and on the Alleged Ottoman Caliphate (Roma, 1919).

[39] See Majid Khadduri, "Islam and International Law," in Islamic Literature (January, 1951), Vol. III, pp. 19–21.

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or violations of international law in the East, which would never have been tolerated in Europe, on the ground that Eastern lands were never recognized by European nations.[40]

In the case of such dependent territories as Bahrayn and other Eastern protectorates, the jurists distinguished between a civilized protectorate of the type recognized by international law and an Eastern "protected state" by a European Power. In the former the protecting state assumes the duty of protecting the smaller or weaker state by undertaking the conduct of its external relations, but it is understood that the attributes of its internal sovereignty are left intact so long as the freedom of action of its government does not involve it with a foreign Power. In the case of Eastern "protected states" the protecting Power, in addition to its right to control foreign relations, is entitled, as stated by the Berlin Conference of 1884–1885, to the right of administering justice over subjects of other civilized states, and, by the General Act of the Brussels Conference of 1890, the right of organizing "the administration, judicial, religious and military services in the African territories placed under the sovereignty or protectorate of civilized nations."[41]

While the British practices with regard to the powers exercised in various Eastern protectorates differed radically, they were usually distinguished by two features. First, Britain maintained a certain measure of independence, which varied from that of Oman to that of the Protectorate of Aden. In the case of Oman, its Sultan has retained his internal sovereignty and has not given up any essential rights of external sovereignty, while in the case of Aden very few powers, if any, have been left to its people. Secondly, Britain does not intend to annex these territories to its empire, but rather has found it more expedient to maintain the ruling families or tribal chiefs to exercise control over their people than to assume full control of the internal administration. Britain's chief interest in extending her influence to such areas as the Persian Gulf, Zanzibar, or the Malay Islands, seems to be primarily to prevent other rival Powers from extending their influence and hence to threaten her commercial or strategic interests.

[40] "The conquest of Algeria by France," says Lorimer, "was not regarded as a violation of international law. It was an act of discipline which the bystander was entitled to exercise in the absence of the police; and the justification for the present interference of France in Tunis and our own in Egypt, must be sought in the extremely rudimentary character which still belongs to what is beginning to be called the European Concert." (James Lorimer, Institutes of the Law of Nations (Edinburgh, 1884), Vol. II, pp. 160–161.)

[41] In the same convention it was also provided that the protecting states were entitled to establish stations, roads, railways, inland steam navigation, telegraph lines, and the maintenance of restrictions on the importations of firearms and ammunition. See W. E. Hall, A Treatise on the Foreign Powers and Jurisdiction of the British Crown (Oxford, 1894), pp. 204–207.

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Professor Robbins, in his discussion on the status of Aden, uses the very convenient term "colonial protectorates" which he applied to Aden and similar Asiatic protectorates. Such territories are administered as part of the British Empire and can hardly be distinguished from colonies. Professor Robbins goes on to argue that international law recognizes only real, not colonial, protectorates, and, as such, a colonial protectorate has no international status.[43] While this term might answer the question with regard to the status of Aden Protectorate, it is doubtful whether it could define with any precision the status of Bahrayn. The Shaykh of this territory has often been referred to in his treaty relations with Britain as an independent ruler, and it is said that his country is under British protection; in the meantime his sovereign rights have been alienated beyond the conduct of foreign relations. The ruler of Bahrayn, as well as those of Oman and Kuwayt, have full control over the native administration, though they have been persuaded in the meantime to accept British advice.

It would seem that, under the foreign jurisdiction of the British Crown, the Eastern protectorates, while they are regarded as "protected states" from an international standpoint, are treated as under "tutelage" from the British constitutional standpoint. This Western concept of tutelage would satisfy Islamic law since it implies ultimate emancipation from foreign rule which is permitted under Islamic law only under *force majeure*.

It is to be noted that this concept seems to imply the principle of the Mandate System adopted by the League of Nations under Article 22 of its Covenant and of the new Trusteeship System, which is designed to replace the Mandate, under the Charter of the United Nations. Both systems are regarded as temporary, which fits the Muslim expectation of emancipation, when the territories are able to "stand alone." The period of tutelage, however, whether administered under the aegis of an international organization, or directly under Britain, is indefinite. Should this tutelage come to an end the Bahrayn Islands, under the new national life of the Islamic countries which has replaced the Caliphate, would then be free to choose whether they would join any union with the neighboring Arab countries, such as the Arab League, or remain independent. Turkey, as one of the successor states to the Ottoman Caliphate, cannot claim sovereignty over Bahrayn, should Britain decide to withdraw, since Turkey has given up all its sovereign rights over Arab lands under Article 16 of the Treaty of Lausanne of July 24, 1923.

[43] Robert R. Robbins, "The Legal Status of Aden Colony and the Aden Protectorate," this JOURNAL, Vol. 33 (1939), pp. 714–715.